

REMARKS – General

Claims:

Claims 1-2, 5-34, and 37-46 are pending in this application. Independent claims 1, 23, and 46 have been amended. Claims 18-19 and 30-31 have been canceled. Support for the amendments to claims 1, 23, and 46 is found in claims 18 and 19 as originally filed, as well as in the specification at page 9, line 30 through page 10, line 12.

Claim Rejections under 35 USC §102:

In the most recent Office Action (OA), claims 1-2 and 5-22 are rejected under 35 USC §102(b) as being anticipated by Schoff et al., US Pat. No. 6,240,555, hereinafter “Schoff”. Specifically, the OA submits that Schoff teaches all of Applicant’s limitations set forth in these claims, including a trigger having both a portion complying with an ATVEF standard and a portion that is not defined by the ATVEF standard. Applicants have amended the independent claims 1, 23, and 46, from which all others depend, to recite a trigger having a portion that does not comply with the ATVEF standard, wherein that portion includes a sleep time indicator. As recited by the independent claims as amended, an interactive icon is displayed for a plurality of time periods, with each of these time periods being interspaced by a sleep time during which display of the interactive icon is suspended. In light of the amendment, Applicants respectfully traverse the rejection.

As set forth in the previous response, MPEP §2131 requires that a single prior art reference disclose each and every element of the claim to sustain a rejection under 35 USC §102. “A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631 (Fed. Cir. 1987). “The identical invention must be shown in as complete detail as is contained in the ... claim.” *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236 (Fed. Cir. 1989).

Applicants respectfully submit that Schoff fails to teach a sleep time indicator being included with any trigger. Further, Applicants respectfully submit that Schoff fails to

teach displaying an interactive icon a plurality of times, with a time period between each of these times where display of the interactive icon is suspended.

Applicants note that the most recent OA suggests, in the rejection to claims 17, 18, and 19, that Shoff does teach this at col. 9, lines 36-46. The OA states that Shoff teaches displaying an icon for "...a set time period, col. 9, line 46; that means a set time period represents more than one time period..." Applicants respectfully traverse this suggestion. This passage includes no teaching of a sleep time indicator. It includes no teaching of a plurality of icon display times. There is no mention of either in Shoff, and no suggestion thereof that can be had without using Applicants' disclosure as impermissible hindsight. Shoff teaches no time period between display periods of the icon. Applicants respectfully submit that Shoff teaches only a single time period. Shoff not only fails to teach a plurality of time periods, but fails to teach any means of determining how frequently the "more than one" time periods – as suggested by the OA – occur as well.

At col. 9, line 46, Shoff teaches the following:

"An icon 204 is displayed at the lower right corner of the screen to inform the viewer that the program 202 is interactive compatible. **The icon 204 can be displayed throughout the program, or faded out after a set time period.** This initial screen represents a first mode of interactivity, where the viewer is presented with the choice of interactive entertainment or non-interactive viewing of the program. As long as the viewer does not activate the icon 204, the viewer computing unit continues to receive the video content program over the selected channel and display that program alone, without any supplemental content (steps 166 and 168 in FIG. 6).

To be sure, this is a teaching of displaying an icon for a single time period. Applicants begin by noting that MPEP §2111.01 requires that "the words of a claim must be given their 'plain meaning' unless such meaning is inconsistent with the specification." Applicants note that the plain meaning of "a set time period" is one, singular duration of time. There is nothing in Shoff's specification to the contrary. This is confirmed by the the Oxford American Dictionary, electronic version 1.0.2, which defines a "period" as a singular noun, which is "a length or portion of time."

Next, there is absolutely no teaching of a sleep period or duration in which the icon is not displayed between repeated displays in Shoff. Shoff simply says that display can terminate after a singular duration of time. None of the attributes set forth in Shoff teach multiple displays of the icon or how to determine how frequently to display the icon. There is simply no teaching in Shoff of displaying an interactive icon a plurality of time periods with each time period being interspaced by a sleep time. To suggest otherwise simply requires the impermissible hindsight of Applicants' disclosure.

In light of the amendment and these comments, Applicants respectfully submit that Shoff fails to disclose, teach, or suggest the features of Applicants' independent claims 1, 23, and 46. As such, Applicants respectfully request reconsideration of the rejection in light of these comments.

Claim Rejections under 35 USC §103:

Claims 23-34 and 37-45 are rejected under 35 USC §103(a) as being unpatentable over Shoff in view of Heer et al., US Published Patent Application No. 2005/0097600, hereinafter "Heer". Applicants respectfully traverse this rejection.

Per MPEP §2141, the guidelines for making a proper determination of obviousness have recently changed, and are guided by the decision by the Supreme Court in *KSR International Co. v. Tele-flex Inc.* (KSR), 550 U.S. ___, 82 (2007). MPEP §2141 states that the Court in KSR "...reaffirmed the familiar framework for determining obviousness as set forth in *Graham v. John Deere Co.*, 383 U.S. 1 (1966). The *Graham* analysis requires a determination of the differences between the prior art and an applicant's invention. Where there are differences, an Office Action "...must explain why the difference(s) would have been obvious to one of ordinary skill in the art." *Id.* Specifically, there must be a "...clear articulation of the reason(s) why the claimed invention would have been obvious." *Id.* Further, "[a] prior art reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention." MPEP §2141.03, citing *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540 (Fed. Cir. 1983), cert. denied, 469 U.S. 851 (1984). "A prima facie case of obviousness may also be rebutted by showing that the art, in any material respect,

teaches away from the claimed invention.” MPEP §2144.05, citing *In re Geisler*, 116 F.3d 1465, 1471 (Fed. Cir. 1997). Emphasis added.

- Applicants respectfully submit that neither Shoff nor Heer teach an interactive icon being displayed for a plurality of time periods, with each of these time periods being interspaced by a sleep time during which display of the interactive icon is suspended. To the contrary, the combination of Shoff and Heer expressly teaches away from Applicants’ invention in that the combination teaches merely displaying an icon for a singular time period. As the combination of references teaches away from Applicants’ invention as recited in independent claims 1, 23, and 46, from which all other pending claims depend, Applicants respectfully submit that any prima facie case of obviousness has been rebutted. Applicants respectfully request reconsideration of the rejection in light of the amendments and these comments.

CONCLUSION

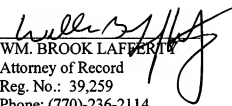
For the above reasons, Applicants believe the specification and claims are now in proper form, and that the claims all define patentably over the prior art. Applicants believe this application is now in condition for allowance, for which they respectfully submit.

If the Examiner believes that there are any minor issues which can be resolved via a telephone conference or by an Examiner's amendment, a telephone call to Philip Burrus at the telephone number listed below is respectfully requested.

Respectfully submitted:

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